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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

**STATE OF CALIFORNIA, STATE OF
NEW YORK, COMMONWEALTH OF
PENNSYLVANIA, STATE OF
COLORADO, STATE OF
CONNECTICUT, STATE OF
DELAWARE, STATE OF ILLINOIS,
STATE OF MAINE, STATE OF
MARYLAND, PEOPLE OF THE STATE
OF MICHIGAN, STATE OF NEW
JERSEY, STATE OF NEW MEXICO,
STATE OF NORTH CAROLINA, STATE
OF OREGON, STATE OF RHODE
ISLAND, STATE OF VERMONT, STATE
OF WASHINGTON, DISTRICT OF
COLUMBIA, CITY OF NEW YORK, AND
THE BAY AREA AIR QUALITY
MANAGEMENT DISTRICT,**

Plaintiffs,

v.

**UNITED STATES POSTAL SERVICE,
and LOUIS DEJOY, in his official capacity
as United States Postmaster General,**

Defendants.

Case No. 3:22-cv-02583-JD

Related Case No. 3:22-cv-02576-JD

**JOINT CASE MANAGEMENT
STATEMENT**

Date: July 28, 2022
Time: 10:00 a.m.
Courtroom: 11, 19th floor
Judge: The Honorable James Donato

1 The parties in these related cases submit this Joint Case Management Statement pursuant
 2 to the Standing Order for All Judges of the Northern District of California dated November 1,
 3 2018, Judge Donato’s Standing Order for Civil Cases dated January 5, 2017, and Civil Local Rule
 4 16-9. Undersigned counsel for Plaintiffs and Defendants have discussed the items enumerated in
 5 the Court’s Standing Order and respectfully submit the following joint statement:

6 1. Jurisdiction and Service

7 Plaintiffs contend that this Court has jurisdiction pursuant to 28 U.S.C. § 1331 (action
 8 arising under the laws of the United States), 28 U.S.C. § 1346 (civil action against the United
 9 States), 39 U.S.C. § 401 (authorizing suits against the Postal Service), and 39 U.S.C. § 409 (suits
 10 by and against the Postal Service).

11 Defendants reserve the right to argue that the Court lacks subject matter jurisdiction over
 12 one or more of Plaintiffs’ claims, including on standing grounds.

13 All parties have been served.

14 2. Facts

15 These cases challenge the Postal Service’s record of decision (ROD) for the purchase of
 16 50,000 to 165,000 next generation delivery vehicles (NGDV). Plaintiffs allege that the final
 17 environmental impact statement (EIS) supporting the ROD did not comply with the National
 18 Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.*

19 On January 7, 2022, Defendants released a final EIS, which evaluated, among other
 20 alternatives, the Postal Service’s Preferred Alternative of procuring “up to 90 percent [internal
 21 combustion engine] NGDV with at least 10 percent [battery electric] NGDV.” Final EIS iii; *see*
 22 87 Fed. Reg. 994 (Jan. 7, 2022). On February 23, 2022, Defendants signed the ROD, which
 23 finalized the agency’s decision to implement the Preferred Alternative. *See* 87 Fed. Reg. 14,588
 24 (Mar. 15, 2022).

25 On April 28, 2022, Plaintiffs CleanAirNow, *et al.* (“NGO Plaintiffs”) filed a Complaint
 26 challenging the ROD. ECF 1 in Case No. 3:22-cv-02576-JD. Also on April 28, 2022, Plaintiffs
 27 State of California, *et al.* (“State Plaintiffs”) filed a Complaint challenging the ROD, and filed a
 28 First Amended Complaint on June 10, 2022. ECF 1, 79 in Case No. 3:22-cv-02583-JD. The

1 cases were related on May 10, 2022. ECF 10 in Case No. 3:22-cv-02576-JD; ECF 27 in Case No.
2 3:22-cv-02583-JD.

3 3. Legal Issues

4 Plaintiffs allege that Defendants' issuance of the Final EIS and ROD was arbitrary and
5 capricious, did not demonstrate reasoned decision-making, exceeded Defendants' statutory
6 authority, and was contrary to the requirements of NEPA and NEPA's implementing regulations.

7 Defendants dispute these claims.

8 4. Motions

9 On June 15, 2022, Oshkosh Defense, LLC filed a motion for leave to intervene as a
10 defendant. ECF 35 in Case No. 3:22-cv-02576-JD; ECF 82 in Case No. 3:22-cv-02583-JD.
11 Plaintiffs filed statements of nonopposition to this motion on June 29, 2022. ECF 38 in Case No.
12 3:22-cv-02576-JD; ECF 82 in Case No. 3:22-cv-02583-JD.

13 There are no other pending motions.

14 Defendants plan to file a motion with the Judicial Panel on Multidistrict Litigation seeking
15 to consolidate these cases with the other case challenging the same Postal Service action. *See*
16 *Natural Res. Def. Council v. DeJoy*, No. 1:22-cv-3442 (S.D.N.Y). Defendants are considering
17 moving for a judicial stay of these actions until the completion of the Postal Service's process for
18 supplementing the Final EIS, and the replacement of the challenged ROD with a substantially
19 modified ROD. Paragraph 12 below discusses the supplementation process and the parties'
20 ongoing discussions regarding a stay.

21 The parties anticipate resolving this matter through cross-motions for summary judgment
22 after filing and service of the administrative record as set forth in the proposed schedule in
23 paragraph 17 below.

24 5. Amendment of Pleadings

25 The Plaintiffs do not currently anticipate any further amendment of the pleadings.

26 6. Evidence Preservation

27 The parties have reviewed the Guidelines Relating to the Discovery of Electronically
28 Stored Information ("ESI Guidelines") regarding reasonable and proportionate steps taken to

1 preserve evidence relevant to the issues reasonably evident in this action. *See* ESI Guidelines
 2 2.01 and 2.02, and Checklist for ESI Meet and Confer. In this matter, such preservation is limited
 3 to that necessary to prepare and file the administrative record.

4 7. Disclosures

5 The parties anticipate that this action will be resolved based on Defendants' administrative
 6 record for the Final EIS and ROD. Evidentiary disclosures are not required in record review
 7 cases, and none are anticipated. Fed. R. Civ. P. 26(a)(1)(B)(i).

8 8. Discovery

9 The parties anticipate that this action will be resolved based on Defendants' administrative
 10 record for the Final EIS and ROD and that discovery will not be necessary.

11 9. Class Actions

12 This case is not a class action.

13 10. Related Cases

14 The Court has related Case No. 3:22-cv-02576-JD and Case No. 3:22-cv-02583-JD. In
 15 addition, there is a challenge to the same Postal Service action pending in another court. *See*
 16 *Natural Res. Def. Council v. DeJoy*, No. 1:22-cv-3442 (S.D.N.Y).

17 11. Relief

18 NGO Plaintiffs ask the Court to: (1) Declare the Postal Service violated NEPA and its
 19 implementing regulations in issuing its Final EIS and Record of Decision; (2) Vacate the Postal
 20 Service's Final EIS and ROD until Defendants have demonstrated lawful compliance with NEPA
 21 and applicable regulations; (3) Issue an order enjoining the Postal Service from any action under
 22 its Next Generation Vehicle Acquisition plan until Defendants have demonstrated lawful NEPA
 23 compliance; (4) Award Plaintiffs their costs, expenses, and reasonable attorneys' fees; and (5)
 24 Provide for such other relief as the Court deems just and appropriate.

25 State Plaintiffs request that the Court: (1) Issue a declaratory judgment that the Postal
 26 Service violated NEPA in issuing the Final EIS and Record of Decision; (2) Issue an order
 27 vacating and setting aside the Final EIS and Record of Decision unless and until the Postal
 28 Service complies with applicable law; (3) Issue an order enjoining action by the Postal Service

1 under its Next Generation Vehicle Acquisition Program until it has complied with NEPA; (4)
2 Award Plaintiffs their costs, expenses, and reasonable attorneys' fees; and (5) Award such other
3 relief as the Court deems just and proper.

4 Defendants dispute Plaintiffs' entitlement to any relief in these cases and therefore oppose
5 the relief sought.

6 12. Settlement and ADR

7 On June 10, 2022, the Postal Service issued a Notice of Intent to Prepare a Supplement to
8 the Final EIS, seeking two rounds of comments from interested parties. The deadline for the first
9 round of comments was July 25, 2022. 87 Fed. Reg. 35,581 (June 10, 2022). On July 21, 2022,
10 the Postal Service updated the Notice of Intent based on its "adjustment to the scope of the"
11 Supplemental EIS, and extended the public comment period for the first round of comments to
12 August 15, 2022. 87 Fed. Reg. 43,561 (July 21, 2022). Based on this notice, the parties are
13 currently discussing whether a stay of the litigation is warranted.

14 The parties have complied with ADR L.R. 3-5. Plaintiffs do not believe that ADR would
15 be productive at this time. Defendants believe that ADR could be useful to achieving a resolution
16 of this lawsuit.

17 13. Consent to Magistrate Judge for All Purposes

18 All parties do not consent to have a magistrate judge conduct all further proceedings.

19 14. Other References

20 Plaintiffs do not believe that this case is suitable for reference to binding arbitration,
21 special master, or the Judicial Panel on Multidistrict Litigation.

22 Defendants agree that the case is not suitable for reference to binding arbitration or a
23 special master. As discussed above, Defendants are contemplating filing a motion with the
24 Judicial Panel on Multidistrict Litigation seeking to consolidate these cases with other cases
25 challenging the same Postal Service action.

26 15. Narrowing of Issues

27 The parties do not believe that it is possible to narrow the issues at this time.

28 16. Expedited Trial Procedure

Because judicial review in this case is based on Defendants' administrative record, the cases should be decided on summary judgment and no trial is expected to occur. The parties agree to and request entry of the summary judgment briefing schedule outlined below.

17. Scheduling

The parties respectfully propose the schedule below:

By August 8, 2022, the parties intend to file a joint motion for a protective order requesting that the Court require the parties to file under seal: (i) portions of the appendix to the parties' motions for summary judgment that contain specific documents in the administrative record that the Postal Service has designated as confidential; and (ii) portions of any motions or memoranda that discuss the contents of documents in the administrative record that the Postal Service has designated as confidential. The parties will file a proposed order with the joint motion.

The Postal Service anticipates filing a certified list of the contents of the administrative record on August 15, 2022. *See, e.g.*, D.D.C. R. 7(n) cmt. (explaining need for similar management procedures in APA actions). The Postal Service is working diligently to compile the certified list and administrative record by that date. If additional time is required to file the certified list, the Postal Service will promptly notify the Court.

Within 5 business days after either the Court rules on the joint motion for a protective order or the Postal Service files the certified list of the contents of the administrative record, whichever is later, the Postal Service will serve two copies of the administrative record on counsel for each Plaintiff via password-protected thumb drive.

The remaining schedule would proceed as follows:

Deadline	Action
30 days from Defendants serving the administrative record on counsel for Plaintiffs	Any motions to complete or supplement the administrative record, including any motions seeking the preparation and/or submission of a privilege log.
45 days from Defendants serving the administrative record on counsel for Plaintiffs or 30 days after any administrative record-related motions are decided, whichever comes last	Plaintiffs' page-proof Motions for Summary Judgment, which will not exceed 25 pages for each group of Plaintiffs.

60 days after Plaintiffs file their page-proof motions for summary judgment	Defendants' page-proof Combined Oppositions to Motions for Summary Judgment and Cross-Motions for Summary Judgment, which will not exceed 25 pages for each case. Defendants may choose to file a single brief for both cases, which will not exceed 45 pages.
30 days after Defendants' page-proof Combined Oppositions to Motion for Summary Judgment and Cross-Motions for Summary Judgment	Plaintiffs' page-proof Combined Replies in Support of Motions for Summary Judgment and Oppositions to Cross-Motions, which will not to exceed 25 pages for each group of Plaintiffs.
30 days after Plaintiffs' page-proof Combined Replies in Support of Motions for Summary Judgment and Oppositions to Cross-Motions for Summary Judgment	Defendants' page-proof Combined Replies in Support of Cross-Motion for Summary Judgment, which will not exceed 15 pages for each case. Defendants may choose to file a single brief for both cases, which will not exceed 30 pages.
7 days after Defendants' page-proof Combined Replies in Support of Cross-Motion for Summary Judgment	Plaintiffs file the joint appendix, after consulting with Defendants regarding its contents.
7 days after Plaintiffs file the joint appendix	Parties file final briefs with appendix citations.
Earliest available date no sooner than 21 days after filing of final summary judgment briefs	Hearing on Cross-Motions for Summary Judgment

If necessary, the parties may seek leave to modify the schedule or page limitations.

With regard to the above schedule, State Plaintiffs' and Plaintiff NGO's position is that Defendants should provide a complete, Bates-stamped administrative record to the Court and the parties, and that briefs should cite to the appropriate administrative record page number, without the need for page-proof briefs, the filing of a joint appendix, or the separate filing of final briefs with appendix citations. However, State Plaintiffs and Plaintiff NGOs will comply with this schedule if it is acceptable to the Court.

Defendants request that the Court enter the above schedule. This case will be decided on a voluminous administrative record parts of which contain confidential information that the parties

1 will be moving the Court to protect. In the experience of defense counsel, an efficient and
 2 straightforward way to manage such cases is for the agency to lodge a certified list of the record
 3 with the Court, and for the parties first to file page-proof summary judgments briefs with Bates-
 4 numbered citations to the record, next to submit a joint appendix containing parts of the record
 5 relevant to the briefing, and then to file final briefs that replace the Bates-numbered citations with
 6 appendix citations. In Defendants' view, that approach will simplify the Court's review: The
 7 final briefs will use short appendix citations (*i.e.*, "JA001") instead of clunky record citations
 8 (*i.e.*, "USPS0000001") and the appendix will make it unnecessary to comb through the entire
 9 record to locate relevant documents. That common approach to case management "assist[s] the
 10 Court in cases involving a voluminous record" – such as a record that contains an "environmental
 11 impact statement[]" (which the record here will include) – "by providing the Court with copies of
 12 relevant portions of the record relied upon." D.D.C. R. 7(n) cmt. (citing authorities). In addition,
 13 that approach has already been adopted by the Southern District of New York, which is currently
 14 hearing a challenge to the same Postal Service action. *See* Civil Case Management Plan And
 15 Scheduling Order, *Natural Res. Def. Council v. DeJoy*, No. 22-cv-3442 (June 29, 2022).

16 As discussed above, Oshkosh Defense, LLC has moved to intervene in this case. If the
 17 Court grants that motion, the parties agree to cooperate to propose a schedule that includes
 18 Oshkosh Defense. The Postal Service cannot file consolidated pleadings with Oshkosh Defense
 19 because of concerns unique to federal agency litigants. Among other things, the Postal Service
 20 would not be able to share draft briefs or pleadings with Oshkosh Defense in advance of filing, in
 21 part due to the potential for release under the Freedom of Information Act. If intervention is
 22 granted, the parties will propose a staggered briefing schedule that would give Oshkosh Defense
 23 sufficient time after the filing of the Postal Service's briefs to avoid duplicative arguments.

24 18. Trial

25 A trial is not anticipated in this record review case. The parties anticipate that the
 26 summary judgment hearing will require 2 to 4 hours.

27 19. Disclosure of Non-party Interested Entities or Persons

28 All required disclosure statements have been filed.

1 20. Professional Conduct

2 All attorneys of record for the parties have reviewed the Guidelines for Professional
3 Conduct for the Northern District of California.

4 21. Other

5 Counsel for the State of California will appear at the case management conference on
6 behalf of all State Plaintiffs.

7
8 In compliance with Local Rule 5-1(h), the filer of this document attests that all signatories
9 listed have concurred in the filing of this document.

Dated: July 21, 2022

Respectfully submitted,

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